

2  
21  
wherein each of the stand up bags is conveyed having one of the opposite side surfaces resting on the conveyor surface, and wherein a drinking straw is applied to the other of the opposite side surfaces of each of the stand up bags.

### **REMARKS**

Claims 1-4 were pending in the application. No claim has been amended herein and new claim 5 has been present for consideration. Reconsideration and withdrawal of the anticipation rejection are hereby respectfully solicited in view of the following remarks.

#### **Objection to the Specification**

The specification has been objected to for containing direct reference to the claims. The two such occurrences noted within the specification have been deleted without prejudice herein. The objection is believed to be overcome.

#### **Claim Rejection - 35 U.S.C. §102(b)**

Claims 1-4 have been rejected under 35 U.S.C. §102(b) as anticipated by Geyssel, U.S. patent no. 4,584,046 (Geyssel). The applicants traverse the rejection based on the following grounds.

As the Office is aware, an anticipation rejection requires that the cited reference must teach each and every aspect of the rejected claims. The teaching must be either explicitly taught or must be inherently or impliedly present. Geyssel neither explicitly, inherently, nor impliedly teaches all of the aspects of claims 1-4.

To illustrate, claim 1 recites in part that "the stand up bag lies with a side surface that is generally opposite said receiving surface (3a) resting on the conveyor surface." At least one aspect of this claim excerpt is not taught by Geyssel. Particularly, Geyssel does not teach or suggest that the side surface lying on the conveyor surface is the side that is opposite the straw receiving surface.

The action refers to col. 1, lines 43-46 and to both the abstract and col. 2, lines 24-31 as support for the incorrect assertion that Geyssel discloses such an arrangement. In contrast, each of these excerpts, even when improperly read without looking at the remaining portions of Geyssel, do not explicitly, inherently, or impliedly teach at least the above aspect of claim 1. Further, when these excerpts are *properly read in context* with the remainder of Geyssel, it is incontrovertible that Geyssel does not teach at least the above aspect of claim 1. The

official action then infers, only from these excerpts, that the particular bag orientation and straw application of claim 1 is taught by Geyssel.

To the contrary, the first excerpt noted in the action states only that straws can be attached to bottles, bags, and packages. This excerpt teaches absolutely nothing about straw or package angles or orientations.

Further, the second excerpts teach only that the attachment wheel 20 can be reoriented relative to two separate and perpendicular axes. First, the wheel 20 can be tilted sideways relative to an axis 15. The axis 15 is horizontal and extends parallel to the package. Thus, the wheel can be tilted at different angles  $\alpha$  so that the straws can be applied diagonally (as opposed to vertically) onto a package surface. *This is clear upon reviewing Figs. 7 and 8 and col. 6, lines 18-23 in Geyssel.* Second, the wheel 20 can be tilted forward and rearward relative to an axis 16. The axis 16 is horizontal and extends perpendicularly through the package 12. Thus, the wheel can be tilted at different angles  $\beta$  so that straws can be applied to a side surface of the package 12 that is not perfectly vertical. This is clear upon reviewing Fig. 9 and col. 6, lines 24-29.

Additional excerpts from Geyssel, taken in proper context, reveal that Geyssel teaches only that a straw is to be applied to one side surface 60 of a package, the side surface 60 being oriented opposite another side surface 66 of the package. Each of these side surfaces 60 and 66 is taught in Geyssel as being oriented generally vertically relative to the conveyor surface 13. Neither side surface 60 nor opposite side surface 66 is not taught as resting on the conveyor surface 13. This is clearly and explicitly set forth at col. 5, line 62 through col. 6, line 6. The package in Geyssel always must rest on its **bottom** surface. The opposite side surface 66 is borne against and supported by the guide rail 67 when the straw is applied to the surface 60. The opposite side surface 66 is *not borne against the conveyor 13*, as claim 1 specifically recites. The structure of claim 1 eliminates the need for the guide rail 67 in Geyssel, and Geyssel teaches no other structure or arrangement.

Thus, though Geyssel teaches that the applicator wheel can be tilted about the axis 15 and the axis 16, the reference *does not teach or suggest that the package 12 can be oriented with a side surface 66 resting on the conveyor 13 while a straw is applied to the opposite side surface 60*. Geyssel teaches only that the package rests on its bottom surface, that a straw is applied to one side surface 60, and that the opposite side surface rests against the guide rail 67. Geyssel teaches nothing else.

Claims 1-4 are neither anticipated nor rendered obvious by the teachings of Geyssel. These claims are in condition for allowance.

**New Claim 5**

New claim 5 has been present herein for consideration. Claim 5 recites an apparatus for applying drinking straws to receiving surfaces of stand-up bags. The apparatus is recited as having a conveyor surface and a transfer means for transferring the drinking straws to the stand-up bags. Claim 5 further recites "wherein each of the stand-up bags is conveyed having one of the opposite side surfaces resting on the conveyor surface, and wherein the drinking straw is applied to the other of the opposite side surfaces of each of the stand-up bags." No such apparatus or stand-up bag arrangement is disclosed in Geyssel. Therefore, claim 5 is also in condition for allowance.


**CONCLUSION**

Claims 1-5 are in condition for allowance.

The examiner is invited to contact the undersigned in order to discuss any remaining issues or matters of form that will move this case to allowance.

Respectfully submitted,

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VERSION SHOWING CHANGES MADE

In the Claims

Please add new claim 5 as follows:

--5. An apparatus for applying drinking straws to receiving surfaces of stand up bags, the stand up bags having a bottom surface, a top end, and at least two opposite side surfaces interconnecting the bottom surface and the top end, the apparatus comprising:

a conveyor surface for conveying the stand up bags; and

a transfer means constructed and arranged for transferring the drinking straws onto the stand up bags,

wherein each of the stand up bags is conveyed having one of the opposite side surfaces resting on the conveyor surface, and wherein a drinking straw is applied to the other of the opposite side surfaces of each of the stand up bags.--.

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